

RECEIVED

OCT 13 1994

**FLEISCHMAN AND WALSH**

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

RICHARD RUBIN

JEFFREY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

HOWARD S. SHAPIRO

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

WILLIAM F. ADLER

MATTHEW D. EMMER

JONATHAN R. SPENCER

DAVID D. BURNS

JILL KLEPPE McCLELLAND

STEVEN N. TEPLITZ

PETER T. NOONE+

ERIN R. BERMINGHAM

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

(202) 939-7900  
FACSIMILE (202) 745-0916

DOCKET FILE COPY ORIGINAL

October 13, 1994

\*NEW YORK AND NEW JERSEY BARS ONLY

**VIA HAND DELIVERY**

Meredith Jones, Esq.  
Chief, Cable Services Bureau  
Federal Communications Commission  
2033 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 92-266

Dear Ms. Jones:

This letter is submitted on behalf of Time Warner Cable ("TWC") regarding the treatment of discounted packages of non-premium a la carte services. In clarifying the rules governing such non-premium a la carte packaging, the Commission faces two separate, but related issues: (1) when will a newly-created package of a la carte services be deemed unregulated, and (2) how should existing a la carte packages (i.e., those initiated as part of the September 1, 1993 restructuring) be assessed.

TWC understands that the Commission has received proposals that would sharply limit (or even prohibit) the migration of services from regulated tiers to new a la carte packages. We are concerned that applying such an approach to existing a la carte packages, virtually all of which contain migrated services, would negate the public benefits from such collective offerings that are already in place and would be completely contrary to the guidance provided on evasion and a la carte offerings in the April 1993 Order. Such an approach also could create burdensome retroactive liability that would unfairly penalize cable operators who migrated services into a la carte packages in reasonable reliance on FCC and Congressional statements encouraging the "unbundling" of programming services and the creation of discounted packages. We also note that the application of new limitations to

No. of Copies rec'd 1  
List ABCDE

existing a la carte arrangements will lead to an enormous disruption in service for millions of subscribers in systems that instituted a la carte package options in September 1993.

Given the broad number of interests that the FCC must balance in deciding this issue, TWC respectfully puts forward the following proposal in an effort to fairly and appropriately reconcile the treatment of new and existing a la carte packages in a manner that addresses concerns about retroactive liability and prospective disruption of service. As described below, operators offering existing a la carte packages would be required to take certain "curative" measures in order to: (1) be protected from retroactive liability, and (2) be permitted to continue offering existing a la carte arrangements.

1. Conditions For No Retroactive Liability. Those operators who established a la carte packages as part of the September 1, 1993 restructuring should not be subject to retroactive recalculation of their rates based on the classification of the a la carte channels as a regulated tier if the following four conditions are met (provided, however, that each of the services offered in an a la carte package as part of the September 1, 1993 restructuring also was available to subscribers on a per channel basis):

- A. Downgrade fees are not imposed for dropping an a la carte package in favor of individual channel subscriptions in the package and an operator pays a full refund to subscribers for any such downgrade charges.
- B. The package discount (including equipment-related charges) does not exceed 50 percent. The operator must reduce the price of the individual channels to come into compliance if the current discount exceeds the permitted level (thereafter, the operator may adjust individual and package prices together, so long as the permitted discount level is maintained).
- C. The operator affirmatively markets the "cured" a la carte options to those subscribers currently taking the a la carte package if the operator exceeded the permitted discount and/or imposed a downgrade fee in the past. The FCC will preempt affirmative marketing requirements of state and local governments related to a September 1, 1993 restructuring.
- D. The operator did not violate the FCC's 1993 rate freeze order in creating a la carte options. If an operator did violate the freeze, it must refund the amount by which its rates exceeded the freeze level.

Meredith Jones, Esq.  
October 13, 1994  
Page 3

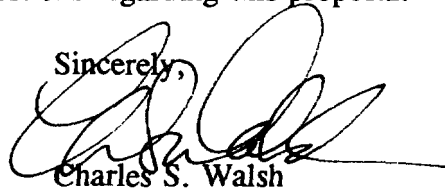
2. Conditions On The Right To Retain Existing A La Carte Packages As An Unregulated Service. Existing a la carte packages will retain their unregulated status if the following two conditions are met.

- A. A cable operator may not hereafter increase the number of channels on a September 1, 1993 a la carte package which contains migrated channels.
- B. A cable operator that retains its existing a la carte package containing migrated channels may add new channels to the system pursuant to the FCC's proposed "new product tier" rules, except that no additional channels may be migrated to any a la carte package or to a "new product tier."

TWC submits that the proposal described above preserves the interests of cable subscribers who are currently benefiting from the a la carte options and addresses the interests of cable operators who relied upon the rules as they were understood to operate at that time. At the same time, this proposal avoids disruption to subscribers and fairly reconciles the treatment of newly created a la carte packages (as to which operators will have clear guidance from the Commission) and existing a la carte packages (which were created in a far more uncertain regulatory environment).

Please let me know if you have any questions regarding this proposal.

Sincerely,



Charles S. Walsh

cc: Blair Levin  
Merrill Spiegel  
Maureen O'Connell  
Jill Lockett  
Lisa Smith  
Mary McManus  
Kathleen Wallman  
Greg Vogt  
William Johnson